

**REMARKS**

The present Amendment is responsive to the Office Action dated July 20, 2010. Claims 14-16, 19, and 20 were rejected in the Action. Claims 14 and 19 are amended, claim 16 is canceled and no claims are added herein. Therefore, claims 14-15, 19 and 20 are now pending in the present application. Applicants set forth the following remarks in response to the Action.

Applicants would like to thank the Examiner for discussing the current Action with Applicants' undersigned representative on September 1, 2010. During the September 1 telephone interview, the 35 U.S.C. § 112, second paragraph rejection of claims 14-16, 19, and 20 was discussed. Applicants respectfully submit that independent claim 14 is amended herein to more clearly define the claimed invention. The claim term "entirely" was deleted from independent claim 14 such that the amended claim now recites, in part, "wherein the downwardly bent distal end of the holding pin is prevented from being retracted within the bore of the shaft under the bias of the spring as the downwardly bent distal end of the holding pin abuts the confronting surface of the distal end of the shaft. In light of the foregoing, Applicants respectfully assert that amended independent claim 14 overcomes the § 112, second paragraph rejection of the claims and request that the rejection of the claims be withdrawn.

Further in the Action, the Examiner rejected claims 14-16, 19, and 20 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 6,712,819 to Zucherman *et al.* ("Zucherman") in view of U.S. Pat. Pub. No. 2004/059343 to Shearer *et al.* ("Shearer") and PCT Application No. WO 02/071986 to Grunberg *et al.* ("Grunberg"). The Examiner asserted that Grunberg shows in Fig. 4c a tool for delivering an implant to the spine that has a retractable rod with a pin at the distal end thereof that is perpendicular to the shaft of the tool.

Further, the Examiner asserted that Grunberg also illustrates in Fig. 8 the engagement of such a pin in a recess of a baseplate. The Examiner asserted that it would have been obvious to one of ordinary skill in the art to modify the pin of the tool of Zucherman as modified with Shearer (teaching a spring located internal the shaft of the apparatus) by placing the pin in a perpendicular orientation or bent downward such that it matches or engages the hole or recess of a baseplate for spinal surgery as taught by Grunberg.

Locking pin 155 and spacer engagement pin 157 of Zucherman may extend and retract somewhat from the shaft of the apparatus along a longitudinal axis thereof. Further, stationary alignment pins 160 extending perpendicular to pins 155 and 157 may be used to engage a spinal implant. As stated in the specification of Zucherman, "As insertion rod 40 is urged distally, locking pin 155 and spacer engagement pin 157 are urged toward the distal end of insertion instrument 100 as well, where pins 155, 157 can engage the main body assembly of the spinal implant." See col.6, ll.10-13 of Zucherman. Further, the specification of Zucherman states, "When alignment pin 160 and spacer engagement pin 157 have engaged their respective portions of a main body assembly, the assembly can be firmly held by the insertion tip 30." *Id.* at col.6, ll.45-47. As described in the specification of Zucherman, pins 155, 157, and 160 are structured and situated to work together to engage and firmly hold a spinal implant.

Applicants respectfully assert that amended independent claim 14 is unobvious over Zucherman in view of Shearer and Grunberg. The combination of these cited references does not teach or suggest, "wherein the holding pin is in an extended position along the longitudinal axis of the bore of the shaft when the downwardly bent distal end of the holding pin is

received in the engagement hole of said orthopedic device," and "wherein the downwardly bent distal end of the holding pin is prevented from being retracted within the bore of the shaft under the bias of the spring as the downwardly bent distal end of the holding pin abuts the confronting surface of the distal end of the shaft" as recited in amended independent claim 14.

As stated above, the purpose of pins 155, 157, and 160 of Zucherman are structured and situated to work together to engage and firmly hold a spinal implant. In contrast, the claimed invention uses a holding pin having a downwardly bent distal end, wherein in an extended position the downwardly bent distal end may be received in an engagement hole of an orthopedic device, and in a retracted position the downwardly bent distal end of the holding pin is prevented from being retracted within the bore of the shaft under the bias of the spring (located partially internal of the bore of the shaft) as the downwardly bent distal end of the holding pin abuts the confronting surface of the distal end of the shaft. The purpose of the downwardly bent distal end of the holding pin of the claimed invention is to pull the implant against the confronting surface of the distal end of the shaft once the downwardly bent distal end of the holding pin is received in an engagement hole of an orthopedic device. The device of Zucherman uses several different pins to attain firm engagement between the insertion tool and the spinal implant. Applicants respectfully assert that if holding pin 155 was to have a downwardly bent distal end, when pin 155 was engaged to the spinal implant, the implant would not be stable against tool 30 because the surface that pin 160 extends perpendicularly from would not firmly engage the surface that is perpendicular to engagement hole 403 of the spinal implant. Therefore, one of ordinary skill in the art would not look to modify pin 155 giving it a downwardly bent

distal end. In light of the foregoing, Applicants respectfully assert that independent claim 14 is unobvious over the cited references and is condition for allowance. Claims 15, 19, and 20 are also in condition for allowance, *inter alia*, their dependence from an allowable base claim.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: October 18, 2010

Respectfully submitted,  
Electronic signature:  
/William A. Di Bianca/  
William A. Di Bianca  
Registration No.: 58,653  
LERNER, DAVID, LITTENBERG,  
KRUMHOLZ & MENTLIK, LLP  
600 South Avenue West  
Westfield, New Jersey 07090  
(908) 654-5000  
Attorney for Applicants